IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR
ORDER

Chairman, Municipal Board, Jaisalmer & Anr. **vs.** **M/s Gyan Chand Khatri through its proprietor**

(S.B.Civil Writ Petition No. 3698/2007)

Date of Order:- 25.10.2007.

HON'BLE MR.JUSTICE SANGEET LODHA

Mr.Yashwant Mehta , for the petitioner.

BY THE COURT:-

In this petition, the petitioner, a local authority has sought writ against a private firm who was awarded a contract for transportation of charcoal from the unit of Hindustan Petroleum Corporation at Jawahar Nagar, Koyali, District Baroda to N.A.C. Stores at Jaisalmer. The grievance of the petitioner is that under the contract, the respondent was to transport 200 metric tons of charcoal in 1290 drums. However, the respondent only transported 1035 drums and handed over the same to N.A.C. Stores at Jaisalmer, thus the remaining 255 drum were not handed over. The petitioners have sought the relief in the petition that respondents may be directed to deposit Rs. 1,34,766.30 with the petitioners towards the value of 255 drums of charcoal.

It is settled law that a writ can be issued against a person who has some statutory or public duty to perform and not

against private individual who have no statutory or legal entity. Article 226 of the Constitution of India cannot be construed so as to substitute the remedies by way of suit etc. available to a litigant under general law.

It is to be noticed that the claim of the petitioner against the respondent relates back to the year 1987 and having not availed the appropriate remedy available under the general law, now such cause is being agitated by way of writ petition. To say the least, the petition filed by the petitioner is fundamentally misconceived and gross abuse of process of court. The petition deserves to be dismissed with exemplary cost.

Accordingly, the writ petition is dismissed with costs Rs. 5,000/- to be recovered from the officer concerned who is responsible for filing such frivolous and mis-conceived writ petition before this court. The amount of costs may be deposited with the Rajasthan Legal Aid Service Authority, Jodhpur within a period of one month from the date of this order. The receipt showing the payment may be filed in the court.

(SANGEET LODHA), J.